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8 ABA # 9505011

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE STATE OF ALASKA

12 ESTATE OF HENRY YAKO,

13 Plaintiff;

14 vs.

15 UNITED STATES OF AMERICA

16 Defendants.

17 **COMPLAINT FOR DAMAGES**

18 Case NO.: _____ Civil

19 COMES NOW the plaintiff, Estate of HENRY YAKO, by and through counsel,
20 Valcarce Law Office, LLC, for its cause of action against defendant, states and alleges as
21 follows:

22 ALLEGATIONS COMMON TO ALL CLAIMS

23 1. Ellen Yako, is the personal representative of the Estate of Henry Yako, deceased,
24 who died on or about May 4, 2017, in Alaska. Ellen, his sister, was appointed as personal
25 representative by the Superior Court in Bethel, Alaska, in probate case number 4BE-17-97 PR, on
July 10, 2017.

ESTATE OF HENRY YAKO,
Vs.
UNITED STATES OF AMERICA, UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

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1 2. An administrative tort claim was filed and received by the U.S. on November 13,
2 and the proscribed six-month wait period for filing has expired. All agents, employees and health
3 care workers who provided care to the decedent, and breached the standards alleged herein, were
4 agents of the U.S.

5 3. Esophageal cancer occurs when cancer cells develop in the inner layer (the
6 mucosa) of the esophagus grows outward through the submucosa and the muscle layer and
7 eventually spreading to other areas of the body. Esophageal cancer rates in American males
8 have increased over 450% in the past 40 years and cause approximately 16,000 deaths per year.
9

10 4. Esophageal cancer is particularly prevalent in the Yukon-Kuskokwim Region of
11 Alaska, and practitioners know or should know that if any symptoms as identified above, the
12 standard of care is to timely perform an endoscope. If identified and treated prior to migrating
13 outside of the esophagus, patients have an 80-90% five-year survival rate. Thus, early detection
14 and treatment are essential to successful treatment. The first and the most common symptom is
15 difficulty in swallowing, which is often experienced first with solid foods and later with softer
16 foods and liquids. Other symptoms include pain and sore throat.
17

18 5. Esophageal cancer can be diagnosed by: An abdomen and chest x-ray or CT scan
19 to check for abnormalities or cancerous growths; lab and blood tests of suspected cancerous
20 tissue; an endoscopy, which involves passing a video camera through the esophagus to visual
21 identify the extent and spread of cancerous cells If suspicious tissue or spots are detected, a
22 needle biopsy is typically performed, so that a sample of the cancerous tissue can be obtained to
23 confirm the diagnosis of esophageal cancer.
24
25

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1 6. As early as 2013, Henry Yako complained of difficulty swallowing and other
2 problems and complaints with his throat. Thereafter, no tests or diagnosis were made in regards
3 to any such complaint or conditions with his esophagus.

4 7. On September 24, 2015, Mr. Yako again went to the Sleetmute Clinic (a Yukon
5 Kuskokwim Health Corporation (YKHC) clinic in Sleetmute, Alaska) and complained that he
6 had difficulty swallowing. He was seen by Justine Phillip, CHP, who according to Mr. Yako's
7 medical records, stated that the Sleetmute Clinic was unable to help him but confirmed a referral
8 would be made to address his symptoms and complaints. For reasons not yet identified, no
9 referral was ever made by the Sleetmute Clinic and no follow-up was ever conducted.
10

11 8. Mr. Yako was not seen again until December 14, 2016, when he again went to the
12 Sleetmute clinic and complained of having a sore throat and difficulty swallowing; he was seen
13 by Agnes Changsak, CHA IV. No referral was made, and no diagnosis or further tests were
14 conducted.

15 9. On January 5, 2017, Mr. Yako was seen at the Stony River clinic (a Yukon
16 Kuskokwim Health Corporation clinic in Stony River, Alaska) and was seen by Sheila Willis,
17 CHA III. Mr. Yako again complained of having difficulty swallowing, a sore throat, and tested
18 negative for strep throat. Mr. Yako was treated for strep throat and was told to gargle with warm
19 salt water and given medication to treat strep throat.
20

21 10. On February 2, 2017, Mr. Yako was seen at the Yukon Kuskokwim Health
22 Corporation hospital in Bethel, Alaska by April Mattson, CHA III. He complained of having
23 difficulty swallowing, pain in his throat, losing 20 pounds since his December 14, 2016 visit, and
24 he could not eat because of the pain. On February 3, 2017, he was again treated for strep throat.
25

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1 11. On February 23, 2017, Mr. Yako was seen at the Yukon Kuskokwim Health
2 Corporation hospital in Bethel, Alaska. He complained of throat and chest pain and had lost
3 approximately 40 pounds since December 2016. He was given a chest X-ray and 2.2 cm nodule
4 was found and a CT scan was ordered by Jeanne Yeagle, M, PA-C. Kevin Stange, MD ordered
5 Mr. Yako to be transported to Alaska Native Medical Center (ANMC) in Anchorage for further
6 tests. He was given pain medication and a tube for feeding.

7 12. By April 25, 2017, Mr. Yako was diagnosed with Stage 3 esophageal cancer,
8 which was determined to be terminal and Mr. Yako was given to pain medications as his
9 treatment.
10

11 13. Mr. Yako died of esophageal cancer on May 4, 2017.

12 CAUSE OF ACTION: NEGLIGENCE

13 14. Plaintiff realleges and incorporate herein as though they were set out in full, all
14 allegations of the preceding paragraphs, and further allege as follow:

15 15. Defendant had a duty to provide quality medical care to the decedent. Defendant,
16 including its agents servants and employees, breached the applicable duty of care, and were
17 negligent in acts and omissions, including but not limited to:
18

- 19 a) Failing to make referrals and ensure that tests outlined above were
20 performed; failing to complete accurate and reasonable testing and
21 procedures; including an endoscopy, an X-Ray, CT scan, and biopsy.
22 b) Failure to provide reasonable treatment;
23 c) Failure to properly treat;
24 d) Failure to reach a reasoned diagnosis;
25

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- 1 e) Failure to follow up;
2 f) Failure to provide adequate care;
3 g) Failure act with the necessary degree of urgency;
4 h) Failure to keep adequate medical records.

5 FIRST CLAIM FOR RELIEF

6 (Pre-Death Pain and Suffering)

7 16. As a direct and proximate result of defendant's negligence, HENRY YAKO
8 experienced physical injury, pain and suffering, severe emotional distress, mental anguish and
9 other injury, harm and loss prior to his death in an amount in excess of \$100,000.00, the exact
10 amount to be proven at trial. As provided by A.S. 09.55.570, this claim survives the death of the
11 decedent and may be maintained by her personal representative.
12

13 SECOND CLAIM FOR RELIEF

14 (Loss to the Estate)

15 17. Plaintiffs reallege and incorporate herein, as though they were set out in full, all
16 allegations of the preceding paragraphs of this Complaint.
17

18 18. At the time of decedent's death, decedent had a life expectancy of at least 20 more
19 years, and decedent's estate has been deprived of the present value of the accumulations,
20 including income, household services and subsistence harvest, that the decedent would have
21 made to decedent's estate had decedent lived out such life expectancy.

22 19. By reason of the injury and death of decedent, decedent's estate has incurred
23 damage and loss including, but not limited to loss of pecuniary benefits and medical and funeral
24 expenses.
25

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20. As a direct and proximate result of the defendant's negligence, the Estate of HENRY YAKO, has incurred damage and loss recoverable under A.S. 09.55.580 as the natural and proximate consequence of the negligent and wrongful acts or omissions of defendant in an amount in excess of \$100,000.00, the exact amount of which is to be proven at trial.

21. Due to reckless and/or intentional misconduct no applicable cap on non-economic damages applies in this matter.

WHEREFORE, Plaintiffs pray for judgment against defendant as follows:

1. All claims for compensatory damages in excess of \$100,000.00, the exact amount to be determined at trial;
2. For interest, costs and attorney's fees; and
3. For such other and further relief as the Court deems just and proper.

DATED this 15 day of May 2018 at Bethel, Alaska.

VALCARCE LAW OFFICE, LLC
Attorneys for Plaintiffs

Jim Valcarce
ABA No. 9505011

CERTIFICATE OF SERVICE:

The undersigned hereby certifies that on this 15 of May, 2018, a true and correct copy was served on the following:

Attorney General
Office of the U.S. Attorney General
U.S. Department of Justice
Main Justice Building
10th & Constitution Avenue NW
Washington, D.C. 20530

U.S. Attorney
Office of the U.S. Attorney, District of Alaska
U.S. Department of Justice
222 West 7th Avenue, #9, Room 253
Anchorage, AK 99513

Jeff Egoak

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